

**PERCEPTIONS AND INFLUENCE
OF PROJECT LABOR AGREEMENTS
ON MERIT SHOP CONTRACTORS**

by

Ian C. Lange

A thesis submitted in partial fulfillment
of the requirements for the degree of

Master of Science in Engineering

University of Washington

1997

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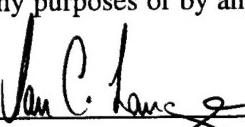
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Abstract

Perceptions and Influence
of Project Labor Agreements
on Merit Shop Contractors

by Ian C. Lange

Chairperson of the Supervisory Committee
Professor Phillip S. Dunston
Department of Civil Engineering

Throughout the past half century the construction trade has experienced a significant shift from a once heavily unionized industry to one that now represents less than 20% of the construction labor force. To increase exposure throughout the nation a significant and successful lobbying effort by organized labor has culminated with several states and the federal government issuing executive orders and a memorandum, respectively, encouraging the use of project labor agreements (PLAs) on publicly funded projects.

This research provides a three part review of the impact PLAs have had on the construction industry. A review of several legal challenges nation-wide is conducted to determine if precedence for the use of PLAs has been established at the state and local levels. An analysis of claims by organized labor that union contractors are more capable, provide better quality, safer and cheaper construction than non-union contractors is conducted. Finally, a survey conducted on merit shop contractors (predominantly non-union) in the western Washington area is analyzed to determine the perceptions of local contractors toward the use of PLAs and the impact that their use has created.

Findings show that the outcomes of legal challenges vary from state to state and no true precedence has been established. Although both union and non-union contractors regularly provide sound construction services, without further detailed research one cannot definitively state that union contractors provide superior service than that of their non-union counterparts. Survey results demonstrate that merit shop contractors are very much aware of and concerned about the use of PLAs in publicly funded project. Many have altered their approach in finding new work and feel that the use of PLAs places them at an overall disadvantage.

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ACKNOWLEDGEMENTS

I would like to extend my acknowledgment and gratitude to my academic committee for their assistance and guidance:

Professor Phillip Dunston, Chairman

Professor Joe Mahoney

Professor John Schaufelberger

as well as to the following persons for their time, information and resources that allowed this research to be accomplished:

Kathleen Garrity, Associated Builders and Contractors of Western Washington

Jack Gilchrist, Seattle/King County Building and Construction Trades Council

Arthur Langlie, Associated General Contractors of Washington

Mark Knudsen, Port of Seattle

David Groves, Washington State Labor Council

CHAPTER 1

INTRODUCTION

1.1 OVERVIEW

Organized labor has suffered a continual decrease in the percentage of labor force membership over the latter half of the twentieth century. As shown in Figure 1, the construction industry has significantly contributed to this decline. From a high of 87.1% in 1947 to a modern day 18.5% in 1996, the percentage of union membership representation in the industry has continued to slide even though the construction labor force has increased by 1.5 million since 1970 (Northrup and Alario 1997).

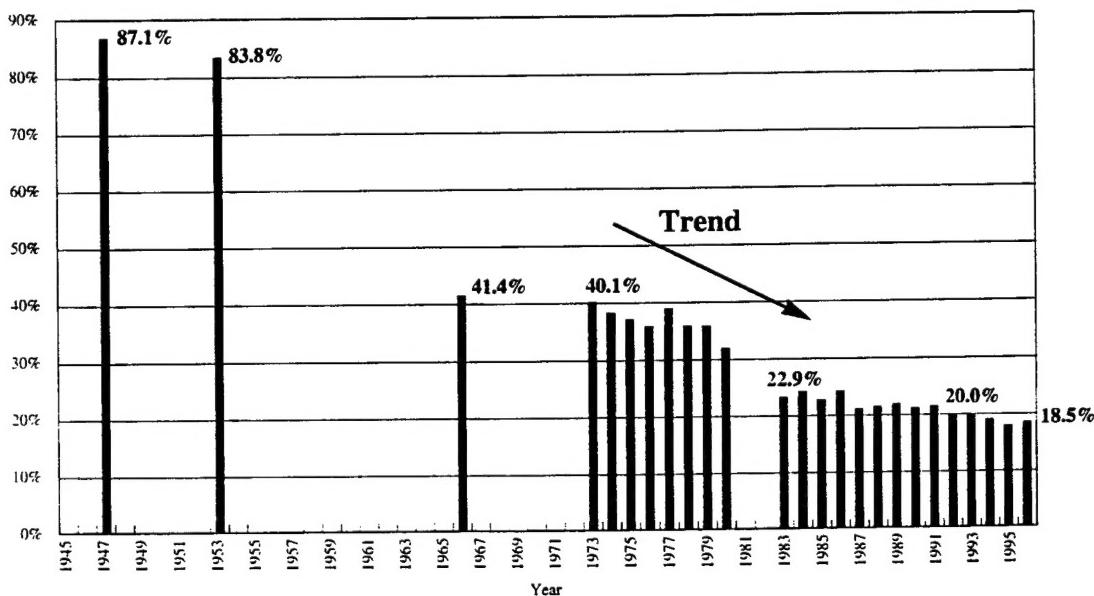


Figure 1. Union employment as a percent of total within the construction industry.
(Source: Northrup and Alario 1997 derived from Union Sourcebook 1985 and U.S. Bureau of Labor Statistics)

As a result of this substantial decrease in the marketplace unions have felt the necessity to regain their niche in the construction industry which they once dominated. In an effort to increase their exposure in the construction industry, unions have introduced legislative initiatives, increased promotional activities, held rallies and demonstrations, engaged in "salting" of companies, and lobbied governmental agencies at all levels for the benefit of

various organized labor concerns. One of the most prolific lobbying efforts of late has been to gain official endorsement for the use of project labor agreements (PLAs) at municipal, state and federal levels. As a result, several state executive orders and a federal memorandum have been issued encouraging the use of PLAs on select projects.

1.2 AN EXPLANATION OF PROJECT LABOR AGREEMENTS

PLAs have been used for decades on both publicly and privately funded construction projects. Only in recent years has their use on publicly funded projects been aggressively challenged and even today they remain virtually unopposed when used on private contracts. PLAs have been used by the federal government on major construction undertakings such as hydroelectric dams, atomic energy facilities, flood control projects (Construction Labor Report 1997) and extensively by state and local agencies on public works projects.

The institution of a PLA typically begins with wages and working rules being negotiated between the owner/agency, or a representative such as a construction management company, and union officials or organizations representing the various crafts such as local Building and Construction Trades Councils. There are two primary elements included in PLAs: (1) the requirement for job site contractors and subcontractors to use the building and construction trade hiring halls to obtain work force labor, and (2) the no-strike clause binding the signatory unions normally for the duration of the project (Murphy and Casey 1994). The agreements also typically provide wages and benefits that parallel local union pay scale and outline grievance and dispute resolution procedures. The PLA is then incorporated into the bidding documents or specifications thereby binding all prospective bidders to the negotiated terms.

Supporters allege that PLAs promote a continuous, stable and economically advantageous project, benefiting the owner from a cost efficiency, quality, safety and timeliness

standpoint. These claims are found in the language in several state executive orders as well as the federal Executive Memorandum of June 1997.

Most opponents of PLAs are traditionally open-shop, or non-union contractors, and organizations that are associated and support such contractors such as the Associated General Contractors of America (AGC) and the Association of Builders and Contractors (ABC). Arguments against PLAs include allegations that the agreements interfere with an employee's right to choose to join a union, they drive up construction costs, and they exclude open-shop contractors from bidding on projects by placing restrictions or pre-qualifications on the bidding conditions. Opponents also claim that since more than 80 percent of all construction workers in the United States are not members of any union, PLAs give preferential treatment or "set-aside" employment to less than 20 percent of the construction workforce.

1.3 PROBLEM STATEMENT

During the past five years the use of PLAs on publicly funded construction projects has been troublesome to many in the construction industry. Significant resources have been expended throughout the United States by various organizations trying to prevent their use on publicly funded projects with seemingly no clear results. Although PLAs tend to be incorporated in large and significant construction projects, in actuality they most likely are associated with only a minor percentage of the overall construction performed in the United States. To this end, several questions arise. Is the use of PLAs actually affecting open shop contractors or countermiming the open market concept? Has there been any definitive legal precedence established since the *Boston Harbor* decision (discussed later) to assist in arguing for or against their use in state and municipal contracting? Are contractors not affiliated with unions affected by the use of PLAs and are they concerned about their use? Is the use of PLAs on the rise? Does the use of PLAs actually provide the benefits to construction projects that advocates assert?

1.4 RESEARCH OBJECTIVES AND APPROACH

The objective of this study is to try to address the questions posed above as well as investigate other issues which may develop pertaining to the use of PLAs. Although PLAs are used in private construction this study primarily concentrates on PLAs as they pertain to publicly funded construction projects. The means to address these issues is by way of a three part approach.

1.4.1 Legal Analysis

As one can imagine with two extremely different outlooks of the same issue, numerous legal challenges over the use of PLAs on publicly funded contracts have followed. Setting the precedence was the U.S. Supreme Court decision on the ten year \$6.1 billion Boston Harbor cleanup project (*Boston Harbor*) in which a PLA was incorporated. The project was initiated as a result of a court order to the Massachusetts Water Resource Authority (MWRA) to clean up the harbor without delay or interruption. The Supreme Court concluded that the National Labor Relations Act (NLRA) did not preempt the MWRA's enforcement of the PLA as it was acting in a proprietary, rather than regulatory capacity (Murphy and Casey 1994). This decision over what amounts to be a technical issue did not clearly address the legality of the use of PLAs in state and municipal contracting. Therefore, of the PLAs which have been adopted since *Boston Harbor* with increasing frequency across the country, dozens have been legally challenged with a variety of results. Chapter 2 will discuss many of these challenges to determine what trend or precedence, if any, the courts are establishing.

1.4.2 Rationalizing the Use of PLAs

Advocates of PLAs believe that their use is in the public's best interest. Claims that construction performed by unions labor is of better quality, projects can be delivered cheaper and in a timely manner, project sites are safer, and union contractors are more capable of performing large construction undertakings are common selling points.

Chapter 3 looks at these issues in more depth to determine if these claims can be substantiated through available literature.

1.4.3 Project Labor Agreement Survey

The final phase of the investigation is the analysis of a survey conducted on contractors in western Washington. The intent of the survey is to get a representation of contractor knowledge of PLA related issues, the impact PLAs have had on the way they conduct business, and an idea of the perception that contractor's have regarding the use of PLAs and other similar restrictive bidding practices.

The restrictive bidding practice addressed other than the use of PLAs is a recent requirement by the City of Seattle, King County and the Port of Seattle stipulating 15% of labor hours on select projects be performed by apprentices in state approved programs. This requirement is viewed as restrictive because currently there are no non-union affiliated apprentice programs approved by the state. Chapter 4 provides a complete discussion of the survey and analyzes the survey results.

1.5 FORMAT OF THIS REPORT

The questions addressed in this report are presented as cited in the previous sections. Chapters 2 and 3 together form the literature review. The survey results in Chapter 4 are followed by a summary and recommendations for future study in Chapter 5.

CHAPTER 2

LEGAL ANALYSIS AND DISCUSSION

2.1 OVERVIEW

This chapter will look at the legal issues pertaining to the use of PLAs in publicly funded projects. A discussion of what the *Boston Harbor* case accomplished will follow as will a review of several cases that have occurred since the *Boston Harbor* decision to determine if a clearer legal precedence has been established for the use of PLAs at state and municipal levels.

2.2 ANALYSIS AND DISCUSSION

The most significant legal development pertaining to PLAs on publicly funded projects was the *Boston Harbor* decision rendered by the U.S. Supreme Court in 1993. By this decision the U.S. Supreme Court held that the National Labor Relations Act does not prohibit state or local governments from entering into union-only project labor agreements as part of their proprietary conduct. The Court did not address any other legal challenge to publicly sponsored union-only requirements, however, such as the legality of such project restrictions under state laws (ABC 1994).

Shortly after the high court's decision, governors of several states issued executive orders encouraging state contracting agencies to consider negotiating mandatory PLAs for future projects. The governor of Washington issued a similar executive order directing the consideration of PLAs for appropriate public works projects on a project by project basis and in accordance with criteria established in the order (Order 96-08 1996).

One of the primary arguments against PLAs is the pre-qualification implication which may restrict competitive bidding. It is argued that although most bidding documents state that no contractor, union or otherwise, is excluded from bidding on contracts including PLAs,

few open shop contractor's submit bids due to the indirect "pre-qualification" that the contractors must adhere to the terms of the PLA contained in the specifications. The Revised Code of Washington (RCW) allowance for pre-qualification of bidders is supplied in RCW 47.28.030, which states, "The rules adopted under this section . . . (3) May establish pre-qualification standards and procedures as an alternative to those set forth in RCW 47.28.070, but the pre-qualification standards and procedures under RCW 47.28.070 shall always be sufficient." In review of the cited RCW, the pre-qualification standards are administrative in nature supplying information to ensure the bidding contractor is responsive and responsible to allow contract award. No mention of PLAs, either inclusive or exclusive is made in either clause.

In *Manson* the Washington Department of Transportation seemingly took advantage of RCW 47.28.030. In addition to the five basic elements of the clause in RCW 47.28.070, the contract specifications further pre-qualified bidders by requiring evidence of successful construction of a floating bridge similar to the one being contemplated in the contract. The court found that the Department of Transportation could not restrict the bidding by the pre-qualification requirement, "prequalification standards, as authorized in RCW 47.28.070, tend to limit the extent of competitive bidding. It is the function of the legislature, not the judiciary or an administrative agency, to circumscribe competitive bidding." Furthermore, pertaining to the requirement that the bidders supply evidence of previous successful construction of the proposed floating bridge configuration, the court found ". . . the issue is whether that decision (*of requiring evidence of successful like projects in the past*) can be applied as a pre-qualification item - thus drastically curtailing the competitive bidding process. We hold that the department, under existing legislation, does not have that authority."

Washington State Executive Order 96-08 encouraging the use of PLAs is relatively new and has yet to be legally challenged, but it is similar to executive orders issued in other states in which PLAs have been aggressively challenged with varying results. The New York Court of Appeals recently issued two opposite decisions. As quoted from these

decisions, "the court held that state procurement laws require public purchasing agencies to demonstrate that a PLA promotes public interest by:

- '(1) Protection of the public by obtaining the best work possible at the lowest possible price, and
- '(2) Prevention of favoritism, improvidence, fraud and corruption in the awarding of public contracts.'

"The court found that the record supporting the *Tappen Zee* PLA met this criteria and the record for the *Roswell Park* PLA did not."

In a more recent development, *Albany Specialties* appealed a lower court decision and in doing so the New York Supreme Court rejected a PLA requirement on the construction of a \$54 million county courthouse. In this case, the court cited the requirements and precedence established in *Tappen Zee* are applicable and determined that those requirements, or "burdens," were not satisfied in this case.

Other developments nationwide concerning the legality of PLAs include *Entertech Electric* where the Sixth Circuit Court of Appeals overruled an Ohio district court upholding a PLA on a Mahoning County justice center project. The Circuit Court stated that "Ohio state law - requiring that contracts be awarded to 'lowest and best bidders' - permits the county to make a 'qualitative determination' on which bid is lowest and best. This determination, the appellate court held, can include the condition that successful bidders comply with a project labor agreement." (Cockshaw's 1996).

California court decisions pertaining to PLAs also seem to be somewhat mixed. In *West Coast*, a case involving a \$3M project containing a PLA with the Contra Costa Building Trades Council, a state superior court ruled that a requirement mandating public works be constructed under PLAs violated California's competitive bidding laws. In this case, the court relied on *George Harms Construction* and concluded "A public agency may not impose conditions on public works contracts which would have the effect of limiting the pool of contractors from which bids will be accepted." (Cockshaw's 1996).

In contrast to the above, during the same month another California Superior Court upheld the *San Francisco Airport* PLA on the \$2.4B expansion project of San Francisco International Airport by stating the PLA "is constitutional and consistent with the purposes underlying competitive bidding statutes" (Cockshaw's 1996). This decision is under appeal, but its outcome may be critical to the resolution of challenges which may be pitted against future municipal and state contracts. Pending the outcome, similarities between the airport expansion project and California state competitive bidding codes with like projects in other states will allow for *San Francisco Airport* to be used in establishing precedence and a successful criteria for the use of PLAs in future projects.

2.3 SUMMARY

Through the review of a series of legal challenges against PLAs in public works contracts throughout the United States, it can be seen that there has been no clear and convincing precedence set by the courts pertaining to the use of PLAs on state and municipal projects. *Boston Harbor* does not seem to play a significant role in legal challenges of PLAs in individual states as it only ruled that the use of PLAs is not in violation of the NLRA, not on their validity in individual states.

A review of the RCW public bidding policies for port districts, public highways and transportation, and the state government finds that PLAs are not specifically excluded from use in construction contracts, but the RCW does not specifically allow for their use. The mixed decisions pertaining to PLAs that the courts have made has not allowed for the establishment of a simple legal precedent. It appears that current state laws do not exclusively prohibit the use of PLAs on public works projects. Therefore, decisions pertaining to PLAs will continue to be handled on a state by state and court by court basis.

CHAPTER 3

RATIONALIZING THE USE OF PROJECT LABOR AGREEMENTS

3.1 OVERVIEW

One of the most debated aspects of the use of PLAs are the endorsements that the public agencies seem to be giving organized construction labor over open shop contractors. The federal executive memorandum on PLAs states, in part, “These specially negotiated agreements between the project owner or construction manager and one or more labor organizations are reached at the outset of the projects in order to **guarantee efficient, timely and quality work; establish fair and consistent labor standards and work rules; supply skilled labor, experienced and highly competent work force, establish set labor-related costs over the project’s life;** and assure stable labor-management relations legally binding dispute resolution mechanisms and protection from strikes, lockouts and other such disruptions.” (emphasis added by author). The State of Washington executive order closely parallels these assertions by stating, “. . . the use of project labor agreements should be considered only in those limited circumstances when such an agreement clearly benefits the interests of the State from a cost, efficiency, quality, safety and timeliness standpoint.”

It can be derived from these public documents that cost, efficiency, contractor capability, and contractor safety are the major rationale for utilizing PLAs. By including such factors in the language of these documents, one is led to believe that the measurement of each factor can be, or already has been made, and the performance of organized labor in the construction industry has been superior to open shop contractors in each case. The purpose of this chapter is to review several critical performance areas in which PLAs contend that union contractors are better. Through a survey of available literature this chapter will outline that these contentions may not necessarily be accurate.

The use of PLAs in publicly funded projects is a sentimental topic and continues to be controversial. Emotions run high when non-union companies believe they are being alienated from the opportunity to acquire new construction work because others may falsely perceive them as inferior to union contractors. The following quote is from the survey conducted as part of this research which represents some common attitudes and opinions of non-union contractors as well as illustrates why non-union contractors are so opposed to PLAs: "With 80% of the construction workers (and taxpayers) being non-union, how can the government justify mandating that any of its work be done union? Philosophically, I am very opposed to PLAs. Based on our company's 16 years of business, dealing with union and non-union subcontractors, I firmly state that the unions do not offer any advantage regarding cost, safety, efficiency or cooperation."

3.2 CONSTRUCTION COSTS

Publicly funded construction contracts are typically awarded to the lowest qualified bidder as dictated by public procurement regulations. Although primarily based on estimated direct construction costs, bids can be swayed by construction market conditions as well as anticipated competition among contractors interested in a particular project. Depending on the expected level of competition contractors can adjust overhead rates, profit margins and other indirect costs which can significantly lower or raise the overall cost of a project. It follows that if fewer contractors are to bid on a project than normally would be expected due to the incorporation of a PLA, the competition will diminish and potentially allow an increase in the bid amounts submitted on the contract. An example of this diminishing competition was discovered as a result of a study conducted by a large New York contractor. The contractor reviewed the impact the use of PLAs has on the number of qualified contractors submitting bids. The study demonstrated that of 21 potential bidders who either "always bid" public works projects (7 contractors) or "occasionally bid" public works projects (14 contractors), only six potential bidders remained after the implementation of PLAs (AGC of WA drived from the Bell study (neither dated)).

In addition to indirect costs which can allow bids to fluctuate, the difference of labor costs between union and non-union contractors can also contribute to a significant variation in construction costs. Northrop and Alario (1997) show that the labor costs of union contractors is higher than those of non-union contractors. One area which they discover increases costs for union contractors is the "terms and conditions costs" which are paid on a per hour basis under the terms collective bargaining agreements. In 1995 these costs amounted to an average of \$2.27 per hour, or approximately 8% of wages and benefits. Table 1 lists these costs and shows the costs which are typically not paid by non-union contractors.

Table 1. Source of "terms and conditions" per hour costs in unionized construction.

Overtime	\$0.93 +
Shift premium	\$0.35
Show-up pay	\$0.23 *
Manning restrictions	\$0.20 *
Fringes paid on hours paid	\$0.18 *
Time paid, not worked	\$0.17 *
Subsistence pay	\$0.07 *
Premium pay	\$0.07 +
Holiday pay	\$0.05
Travel pay	\$0.02 *
TOTAL	\$2.27

* Not usually paid by open shop contractors.

+ About 10% paid at double time by unionized contractors; almost always paid at time and one half by open shop contractors.

(Source: Northrup and Alario (1997) from *Costs of Terms and Collective Bargaining Agreements*, Construction Labor Research Council, Mar 1996).

It is plain to see that an estimated difference of \$0.87 per hour (items noted by asterisk) over the course of a multi-year project would accumulate to a substantial difference in labor costs between union and non-union contractors. Northrop and Alario also discuss data from PAS, Inc., which surveys open shop construction wages and conditions. Using 1996 data taken from 11 non-union crafts it was concluded that the average hourly wage and fringes was \$18.11, more than \$10 less than the hourly \$28.50 average wage and fringes paid to union construction employees during the same year.

It should be noted that the Davis-Bacon Act mandates hourly wages and fringes that must be paid on federally funded projects. Similarly, most states have Little Davis-Bacon laws which parallel the federal act. Unions may argue that these laws precipitate a level playing field in terms of labor costs on publicly funded projects, but it must be emphasized that these wages do fluctuate between regions and they are the established minimum to be paid, not what union collective bargaining agreements normally require.

3.3 CONTRACTOR CAPABILITY

PLAs have historically been used on large public works projects which were performed by union contractors during the union dominated years of this century. PLAs continue to be used predominantly on larger projects possibly because the perception remains that only union contractors are large enough to accomplish significant construction projects. This perception is reinforced by the federal executive memorandum by setting a threshold of not considering PLAs on projects under \$5 million and also locally by the Seattle/King County Building and Construction Trades Council encouraging and seeking PLAs for projects over \$60 million.

Northup and Alario point out several key instances which contradict the perception of union contractors being the only ones capable of performing significant construction. They first cite the *Engineering News Record* "400" list which for 3 years (1993-1995) lists Flour Daniel as the largest contractor with a total revenue of \$7.5 billion. Northrop and Alario note that although Flour Daniel was created by the merger of Flour, a unionized contractor, and Daniel, an open shop contractor, it is estimated that approximately 80% of their domestic revenue is accomplished by the open shop. Furthermore, Brown and Root is the largest pure open shop contractor and is listed as the sixth largest contractor and Foster Wheeler is listed at number ten (\$2.7 billion and \$2.1 billion, respectively).

As a result of the contractor survey discussed in Chapter 4, it should be noted that there are a significant number of local large open shop contractors. Of the five contractors that

responded to the survey with an average annual income of greater than \$50 million, none were union affiliated. Although the incomes listed by these contractors pales in comparison to the top of the *Engineering New Record* list, it does demonstrate that large open shop contractors do exist and apparently have the resources to accomplish significant amounts of work.

3.4 SAFETY

The abundance of safety statistics available from many public and private agencies is overwhelming. Workplace injuries, deaths and monetary losses due to accidents are all required by statute to be accounted for and reported. But with all these records available, it appears that there has only been one recent significant study on whether union or non-union contractors maintain a safer workplace (Culver 1995).

The study compared 5,964 fatalities in the construction industry that were investigated by the Occupational Safety and Health Administration (OSHA) from 1985 through 1993. The study determined that the union fatalities ranged between 20% to 57% higher than non-union over the nine year period. The study also found that employees working for smaller construction firms are at a greater risk of death. Table 2 summarizes these results.

Although this statistical analysis is said to have been conducted in a straight forward and non-biased manner (Northrup and Alario 1997), several rebuttals have been offered by unions and union organizations. According to the Construction Labor Research Council (NECA 1995) there are several flaws in the study. The most severe is their claim that the study overstates the number of union fatalities. They allege that the OSHA database used in the study considers a entire construction site union if it has at least one union subcontractor, therefore there is no way to tell if the employee killed on a job was a union member or not. The AFL-CIO Building and Construction Trades Department also allege that Culver incorporated the employees considered to be overhead on union projects into

the non-union pool, "thereby diluting the actual death rates in the non-union sector and increasing the rates in the union sector."

Table 2. Comparison of union and non-union contractor fatalities.

Year	Fatalities			Workforce		Fatality Rate *	
	Total	Non-Union	Union	Non-Union	Union	Non-Union	Union
1985	729	510	219	3655000	1061000	14.0	20.6
1986	660	482	178	3867000	1092000	12.5	16.3
1987	724	514	210	3992000	1060000	12.9	19.8
1988	720	526	194	4097000	1096000	12.8	17.7
1989	663	491	172	4177000	1145000	11.8	15.0
1990	723	511	212	4049000	1073000	12.6	19.8
1991	661	497	164	3647000	977000	13.6	16.8
1992	582	425	157	3624000	906000	11.7	17.3
1993	502	369	133	3709000	929000	10.0	14.3
Totals	5964	4325	1639	34817000	9339000	N/A	N/A

*Fatality Rate = (Number of Fatalities/Number of workers) x 100,000

(Source: ENR 1995 from Culver)

Unfortunately the Culver study is the only in-depth study on the subject of whether union or non-union contractors are safer in the construction industry. Several reviews have been accomplished on accidents and fatalities on large construction sites, some of which have been accomplished using PLAs. While the individual tally of accidents on an individual project is a useful part of the puzzle, it cannot determine a trend, nor can a fair comparison be drawn if the same contract was accomplished by a non-union contractor. It appears that more research into contractor safety must be accomplished to determine if one classification of contractor can be unilaterally labeled safer than the other.

3.5 OTHER CONSIDERATIONS

The federal executive memorandum and the Washington executive order on PLAs allude that union contractors may be better suited to accomplish large and significant projects because of many other factors. These include labor peace, labor training and skill, timeliness of completing the project and the quality of the project. Several of these areas belong hand in hand and should be examined as such.

Labor peace is largely an issue that only directly concerns organized labor and union contractors. Although open shop contractors are often the recipient of labor protests near or around their job site, rarely are their non-union employees deemed the cause of the discord. Labor unity plays a significant role in accomplishing a construction project in a timely manner. Strikes and lock-outs, which are most common when dealing with union employees, cause work stoppages which can adversely impact a construction schedule.

The training of skilled union labor through apprenticeship programs is a well established procedure. Apprentices go through classroom and on-the-job training for lengthy periods of time prior to becoming full journeymen. Non-union contractors and their employees have similar training available through the federally approved Construction Industry Training Council (CITC) training program. This program was initially approved by the Washington State Apprenticeship and Training Council, but approval has been temporarily set aside by the state court system because the state council approved CITC improperly, not because of the quality of the training offered.

How well construction workers are trained definitely has a direct bearing on the final quality of a project, but ultimately the quality is defined by the owner or user based on how well the newly constructed facility maintains and operates. In today's competitive construction industry, customer satisfaction is equally important a factor in determining how well a construction project was accomplished as cost, timeliness and safety. This chapter was devoted to challenging some of the aspects that are promoted by organized labor advocates to be the reasoning why using PLAs are in the public's best interest. Out of fairness to the contractors that have worked on successful projects containing PLAs, in closing the author feels it is necessary to offer an example of customer satisfaction partially contributable to the use of a PLA on one such project.

The recently completed Seattle Waterfront Pier 66 rehabilitation project was funded by the Seattle Port Authority. An interview with Mr. Mark Knudsen, Director of Maritime Operations, revealed that the 18 month construction schedule was extremely tight, but had

to be held firm as functions were being booked at the new convention center which was part of the project. Additionally, the project site was very restricted and logically could not support two gates (for union and non-union contractors). The restricted site would also hamper the ability of numerous subcontractors to work unencumbered by the presence of other crafts. These are some of the primary reasons the Port Authority included a PLA in the contract specifications. The Port was very pleased with the outcome of the \$70 million project and attributed some of their satisfaction to the PLA. The project was completed within budget and on time. All labor disputes were resolved quickly and in accordance with the disputes resolutions procedures outlined in the PLA. The Port also indicated that in their opinion, the general contractor's bid was not affected by the inclusion of a PLA in the bidding documents.

CHAPTER 4

PROJECT LABOR AGREEMENT SURVEY

4.1 INTRODUCTION

4.1.1 Background and Intent of Survey

As a result of research conducted into the use of PLAs on publicly funded contracts, the author felt it was necessary to determine the actual impact that PLAs have on construction contractors. The premise used in developing a worthwhile survey was that PLAs are a vehicle that generally assists the unionized construction work force in securing employment. Therefore, the potentially greatest negative impact caused by the use of PLAs was assumed to be toward non-union contractors. Using this pretense, a survey was developed and geared toward a pool of contractors that typically do not use or employ members of organized labor on their projects.

The Associated Builders and Contractors (ABC) of Western Washington was contacted to assist in the development of the survey used in this study. It is important to note that ABC is a national organization which promotes and supports contractors that believe in the "merit shop" concept. Merit shops believe in allowing all workers, contractors, employers and employees to participate equally in the marketplace, free of biasing restrictions. This further develops into the belief that contractors should obtain new work by fair and equal competition regardless of labor affiliation status. ABC of Western Washington is the local affiliate of the national organization. The local membership, which includes some union affiliated contractors that believe in the merit shop system, is primarily made up of contractors that do not use union labor.

4.1.2 Methodology and Reasoning of Survey Development

The survey was developed in a manner to best determine what is actually happening with construction contracting in western Washington as a result of the potential implementation of and actual use of restrictive bidding practices. Initial survey questions were developed to get a flavor of survey respondent (contractor) demographics including type of contractor (general or specialty), labor affiliation, and size of firm. Additionally, contractors were asked what type(s) of funded work they typically bid (public or private).

The next area of questioning was developed to assist in determining local contractor awareness of the recently passed federal memorandum and the Washington State executive order supporting the consideration and use of PLAs on future publicly funded contracts. The author felt that getting a sense of contractor awareness of the issues at hand was important because if the contractors were unaware these new issues, then it may be fair to assume that they also may not be aware of any potential ramifications which may result in complications or difficulties in obtaining future work. Complications might include new or unknown administrative procedures and issues associated with using union labor if the contractor selects to work under a contract that contains a PLA or difficulties that may arise if current contractor (non-union) workforce members leave the company or become union members during the PLA contract, and therefore, may leave the contractor with a shortage of skilled labor to accomplish future work.

During the development of the survey it was learned that in addition to the federal and state issues pertaining to PLAs, there is also a requirement that has been adopted by the Port of Seattle, City of Seattle and King County and placed in their construction contracts mandating that 15% of labor hours on selected projects be performed by apprentices in state approved programs. This requirement was adopted on the premise of enhancing the training and development of the minority and women segment of the skilled work force. Therefore, this issue was also included in the survey.

The next phase of the survey was developed in a manner to establish the prevalence of contracts containing PLAs in publicly funded and privately funded work, both prior to and after the Washington State executive order was issued. The results would assist in determining if the use of PLAs may be on the rise or if they were never used widely and still remain nominally used in construction contracting. Furthermore, contractors were asked if they had ever decided against bidding on a contract specifically because provisions of the contract included a PLA, and why they felt compelled to pass up this potential for new work. The latter questioning was in an effort to capture contractors' attitudes and perceptions toward PLAs and their use, as well as to determine if their feelings toward the issue might actually alter a business decision toward acquiring future work.

The final phase of the survey was developed to establish actual impacts realized by contractors as a result of the potential for and actual implementation of PLAs on publicly funded work. The questions address the contractors' necessity to change bidding practices or approaches to bidding, perceptions of competitiveness with others as a result of PLAs and considerations regarding the future use of PLAs. This area is probably the most critical of the survey because it inquires into real immediate changes in business methodology that contractors may be experiencing either by choice or necessity.

The actual final survey that was developed and sent to the contractor survey pool is supplied in Appendix A.

4.2 SURVEY RESULTS

Using the ABC of Western Washington membership database as a survey pool, 182 surveys were issued and 76, or 42%, were completed and returned. This fairly high response rate provided sufficient data for reasonable review and analysis of the survey results. The reader must be made aware that this is a subjective and largely non-quantifiable survey, therefore, no margin of error is calculated. The survey supplies

contractors' perceptions about issues relating to restrictive bidding practices and more specifically, what contractors in the western Washington area feel about the same. Throughout this chapter select figures and tables are supplied for illustration purposes and a complete tabular listing of the survey results is supplied in Appendix B.

Of the 76 survey respondents, 91% used a non-union labor workforce (69 contractors) and 9% were affiliated with union labor (7 contractors). Of all the respondents, 28% were general or prime contractors, 50% were specialty contractors, and 22% claimed they functioned as both general/prime and specialty/subcontractors. Using the Construction Specification Institute, Inc. (CSI) format of 16 construction divisions as a guideline, contractors were asked to best describe the work that they perform on the job. Contractors that did not specifically identify a division describing their work were assigned the most appropriate division by analysis of their survey as a whole. For example, contractors that claimed to be general or prime were assigned to Division 1, General Requirements. Nine of the 16 divisions were represented, of which "general requirements" and "electrical" were the most common. Five of the 7 union contractors either performed general requirements (3 contractors) or sitework (2 contractors). Figure 2 illustrates the types of contractors represented in the survey.

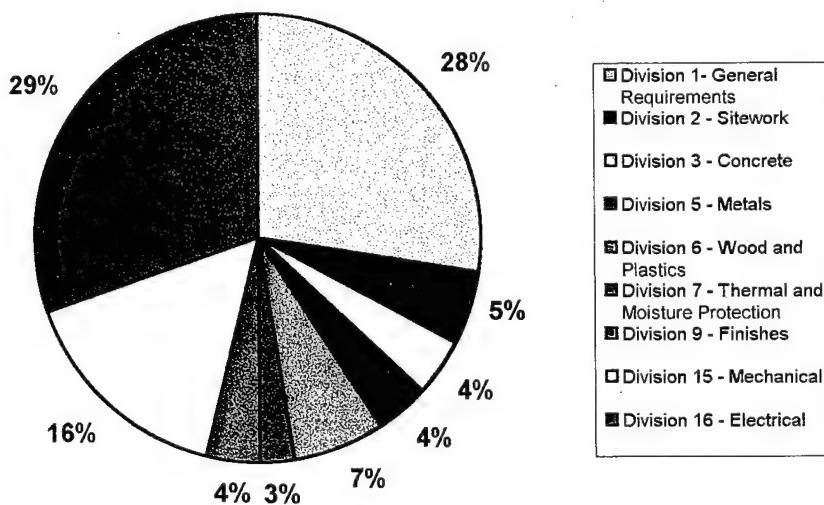


Figure 2. CSI trades represented by contractors.

Average annual construction volume was used to compare the size of contractors that responded to the survey. This information was requested under the premise that most restrictive bidding practices, and specifically PLAs, are used on larger construction projects which typically larger contractors bid as the general. The Seattle/King County Building and Construction Trades Council, AFL-CIO (Mr. Jack Gilchrist) pursues establishing PLAs only on projects \$60 million and over, and the federal executive memorandum suggests PLAs be considered only for projects over \$5 million.

As previously discussed in Chapter 3 smaller contractors can certainly accomplish projects above this threshold, but many do not have the capacity, facility, or desire to accomplish multi-million dollar projects as the general contractor and therefore may not bid on large projects regardless of the inclusion of PLAs. The reader should be aware that all subcontractors serving on contracts containing PLAs are also bound to comply with the terms of the PLA.

Figure 3 illustrates the size of contractors responding to the survey. The figure reveals that a significant number of contractors (34) are medium sized contractors with an annual volume of work ranging from \$1-3 million. Of the remaining contractors whose income is outside this range, 32 complete greater than \$3 million dollars of work per year, including 5 over \$50 million. Larger contractors most likely bid on larger contracts and therefore, the chances of desiring to bid on a contract that contains a PLA would be greater. For this reason, the survey responses of the nineteen contractors (26%) with an annual gross income greater than \$6 million (hereafter referred to as "large contractors") were compiled separately. In pertinent areas of the following discussion the results from this sub-group will be addressed and/or compared to the whole to acquire a better appreciation of how the large contractors more likely to be affected by PLAs feel about specific issues.

Contractors pursue a vast array of construction contract types, but the financing of construction can be segmented into two primary funding sources - public and private capital (with the few exceptions of public/private ventures). For this reason, contractors

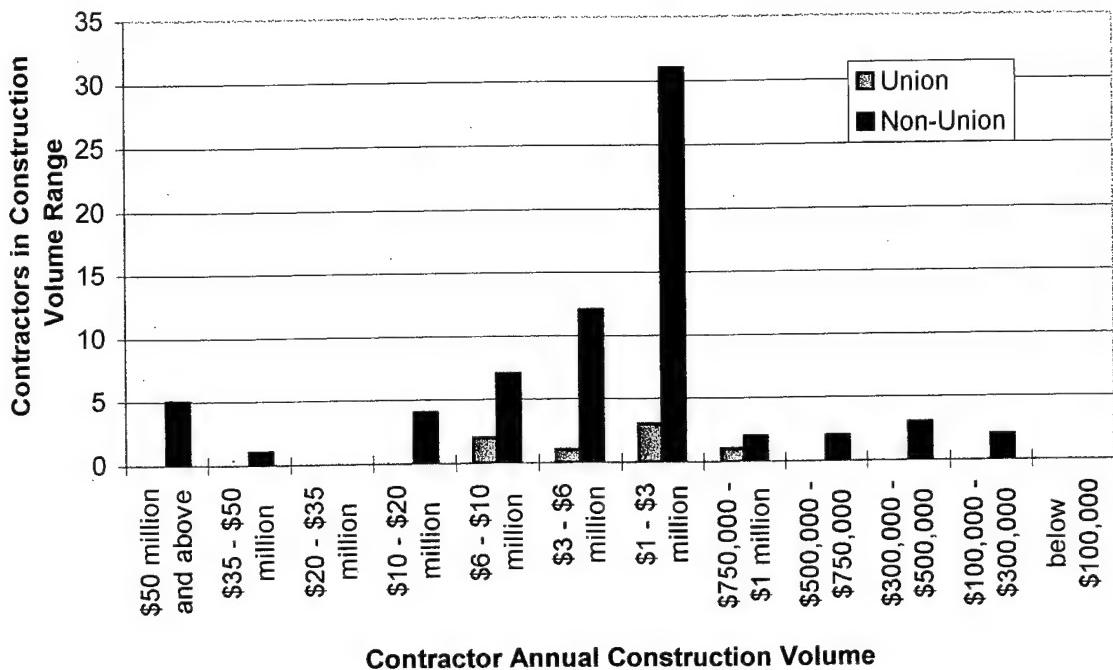


Figure 3. Contractor annual construction volume.

were surveyed as to how many contracts they bid (sealed bid and negotiated) and of those, how many they were awarded. Furthermore, of the successful bids contractors were requested to provide a breakdown of sealed bids and negotiated contracts they received. Figure 4 illustrates the information obtained from these questions.

Analysis of Figures 4(a) and 4(b) indicates that 47% of contractors bid on over 80 contracts annually. Eleven of the 36 contractors that comprise the 47% figure are large contractors. Similarly, 33% of the contractors surveyed are awarded over 80 contracts a year and of the 25 contractors that comprise this figure eleven are large contractors. "Over 80" was the largest answer option offered on the survey as it was anticipated that few contractors submit, on average, more than one bid per week. It was also anticipated that even fewer contractors are awarded more than one contract per week. These high results when contrasted with Figure 3 seem to indicate that the majority of contractors (\$1-3 million range) comprise the bulk of their annual work with multiple small projects.

Figures 4(c) and 4(d) compare favorably as 23% of the contractors were awarded zero sealed bid contracts, yet 26% of the contractors were awarded over 50 negotiated contracts per year. Furthermore, cumulatively, 59% of the contractors were awarded at least 11 negotiated contracts.

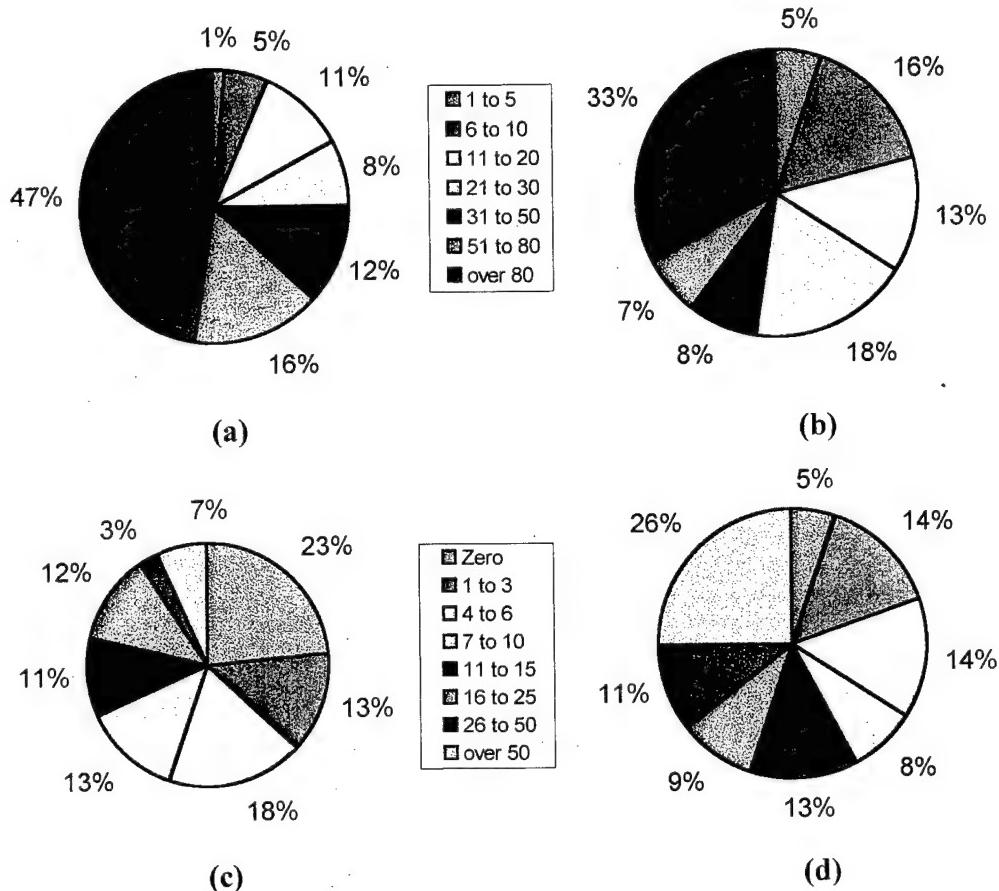


Figure 4. Contractor annual construction workload. (a) Annual number of contracts bid and negotiated by contractors; (b) Annual number of contracts awarded to contractors; (c) Annual number of contracts obtained by sealed bid; (d) Annual number of contracts obtained through negotiation.

Figure 5 shows the breakdown the procurement methods by which the large contractors obtain their work. It appears that most large contractors follow suit with all other contractors and the majority of construction work, in terms of number of contracts, is obtained through negotiated procurement.

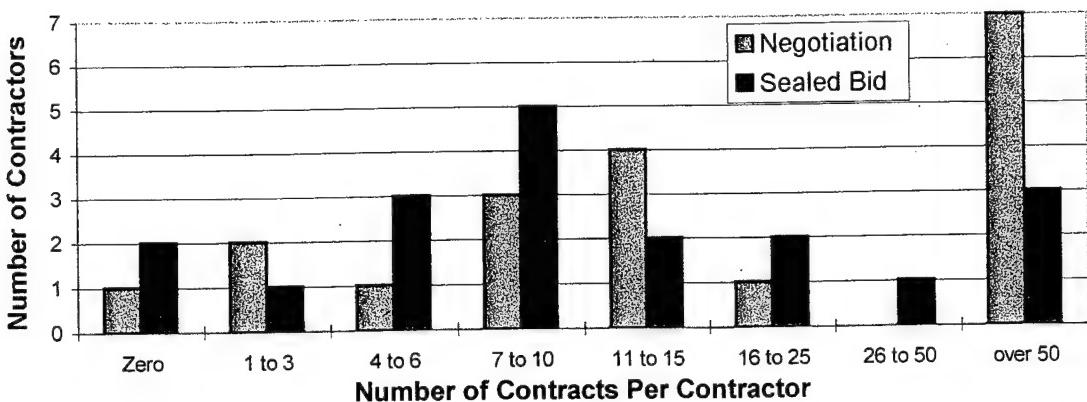


Figure 5. Contract procurement methods by companies with annual gross income greater than \$6 million.

It seems that a large fraction of contractors obtain most new work by negotiation.. It can be theorized that since the procurement of publicly funded projects is predominantly accomplished by sealed bid, then the large number of negotiated contracts are most likely funded privately. In turn, these privately funded contract are less likely to contain PLAs. Figure 6 further supports this theory as it represents the number of contracts funded by three different funding sources - federal, state/local and private. The counter to this argument, however, is that subcontractors may obtain work on publicly funded projects through negotiation with the general contractor.

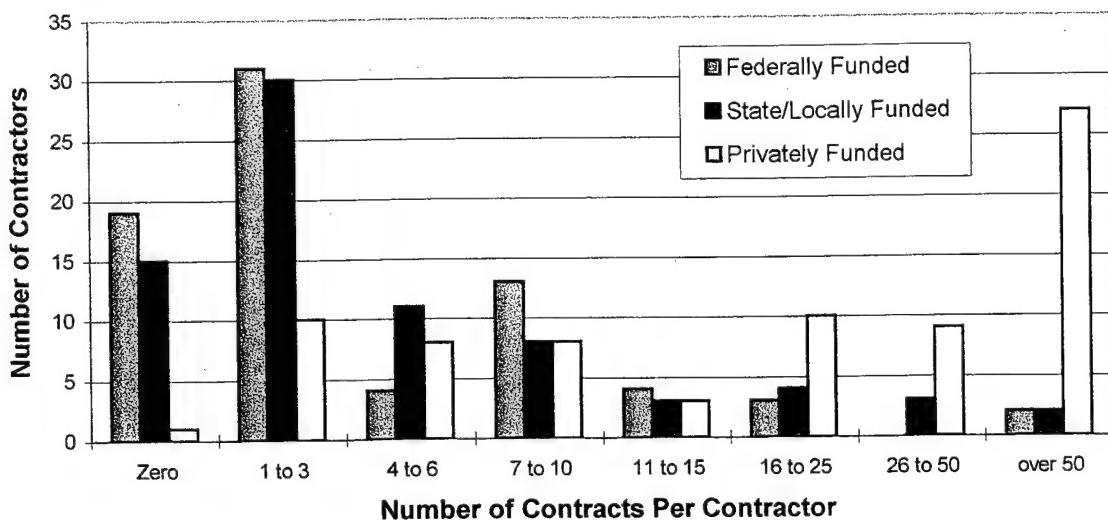


Figure 6. Sources of contract funding.

Figure 6 clearly illustrates that a significant number of contracts are privately funded. Twenty-seven of the contractors surveyed indicated that they perform over 50 privately funded contracts per year. Using a conservative 50 contracts each, this equates to 1350 contracts. For comparison's sake, if a liberal number such as the maximum number of contracts from each range was taken when calculating the total number of publicly funded contracts (federal, state/local combined), the total comes to only 1116 contracts.

It is commonly acknowledged that public works projects are typically significant in value, and therefore, the preceding comparison cannot be, nor was it meant to be, translated to dollar values. The comparison, however, does illustrate that significantly fewer contractors bid on public works projects and therefore seem to have fewer chances of coming across a project containing a PLA; therefore, having a lesser chance of being affected by the ramifications of PLAs.

It appears that most contractors (96%) are aware of the use of PLAs used today in the construction market. Table 3(a) indicates that there is little difference in knowledge of this issue between union affiliated contractors and non-union affiliated contractors. This high awareness also holds true regardless of contractor size. Tables 3(b)-(d) show that there is again a high awareness of the significant PLA related documentation at the federal, state and local level. One item of interest is that of the three specific issues inquired about in the survey, the largest amount of contractors (20%) were unaware of the State of Washington executive order encouraging the use of PLAs. This may be attributed to the fact that this executive order was issued with fairly low publicity by the now former governor in December 1996 during the waning days of his term.

Table 3. Awareness of project labor agreement issues. (a) Contractor awareness to the use of PLAs; (b) Contractor awareness of federal executive memorandum of June 1997; (c) Contractor awareness of the State of Washington executive order of December 1996; (d) Contractor awareness of Port of Seattle, City of Seattle and King County requiring 15% of labor hours on selected projects to be performed by apprentices in state approved training programs.

(a) Use of PLAs.

	Union	Non-Union	Total
Aware	6	67	73
Unaware	1	2	3
Total	7	69	76

(b) Federal executive memorandum.

	Union	Non-Union	Total
Aware	6	59	65
Unaware	1	10	11
Total	7	69	76

(c) State executive order.

	Union	Non-Union	Total
Aware	6	55	61
Unaware	1	14	15
Total	7	69	76

(d) Apprentice training requirement.

	Union	Non-Union	Total
Aware	6	62	68
Unaware	1	7	8
Total	7	69	76

Since the *Boston Harbor* Supreme Court decision (1993) many states and municipalities have introduced and entered into PLAs on numerous public works projects. To determine to what extent the western Washington area has implemented the use of PLAs, contractors were asked if they have ever bid on a contract containing a PLA. Figure 7 illustrates that only 18% of the contractors have ever bid on such a contract and only 2 of the large contractors are included in this percentage.

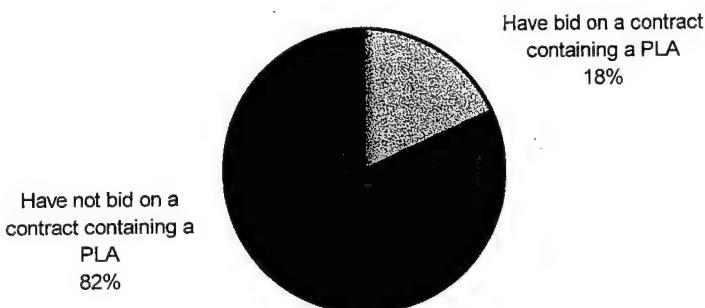


Figure 7. Frequency of contractors bidding on contracts containing a PLA.

To determine in what types of contracts PLAs are most prevalent, the 18% (14 contractors) were asked to give the approximate number of publicly and privately funded contracts in which PLAs were incorporated. Furthermore, contractors were requested to supply the number of contracts they bid containing PLAs during the 1997 calendar and cumulatively for all the calendar years prior to 1997 for each funding type. This breakdown was in an effort to determine the impact, if any, the December 1996 Washington State executive order had on the utilization of PLAs.

Figure 8 suggests there have been PLAs used in public contracting prior to 1997, but their use has been increased during 1997. The reasons for this increase cannot be assessed solely as a result of the issuance of the state executive order. However, the order may have influenced owners and public agencies to be more receptive to the use of PLAs and possibly experiment with their use. Other factors beyond the scope of this survey such as the economic health of the area, public works projects initiated during 1997 versus previous years, and the marketing of PLAs by union organizations should also be examined to get a complete picture.

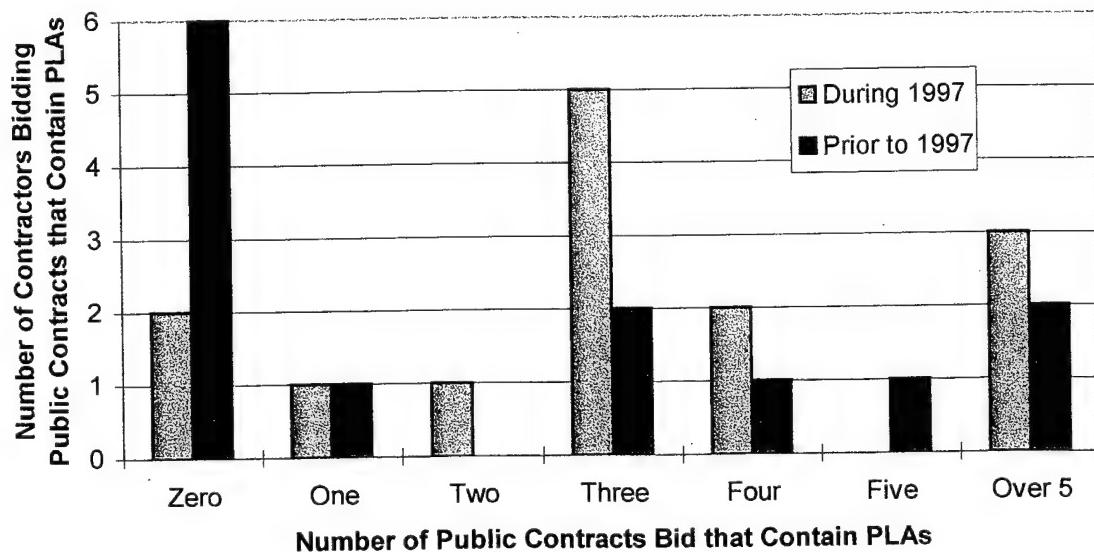


Figure 8. Comparison of publicly funded contracts that contain PLAs that were bid during 1997 with those that were bid prior to 1997.

As might be expected, and shown in Figure 9, the use of PLAs in privately funded projects has been minimal in previous years. While a conservative 50% as many have been bid in 1997, an increase in the number of PLAs used in private contracts is not apparent.

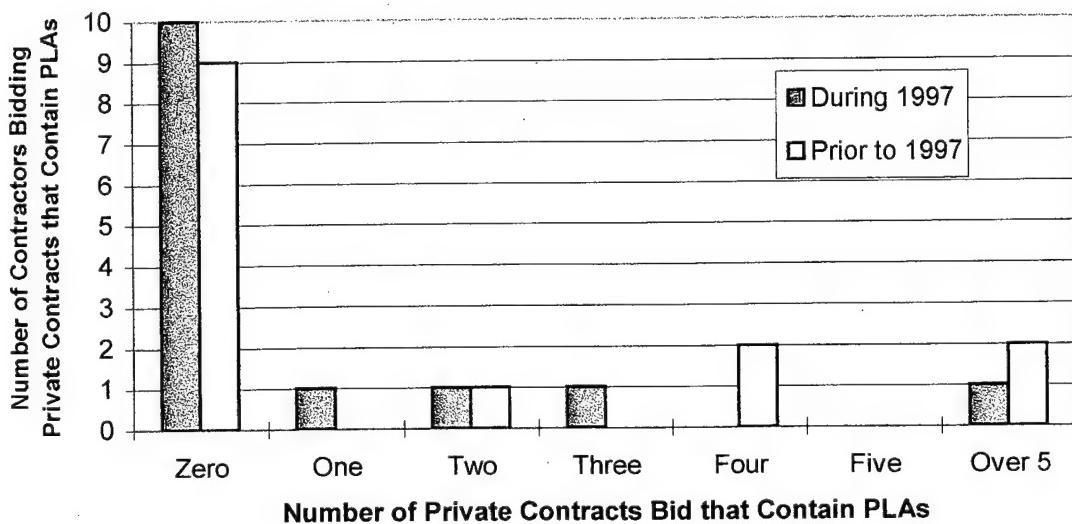


Figure 9. Comparison of privately funded contracts that contain PLAs that were bid during 1997 with those that were bid prior to 1997.

The next area of the survey was to determine contractor attitude toward the use of PLAs and motivation for these attitudes. The contractors were asked if they had ever turned down the opportunity to bid on a contract solely because a PLA was incorporated into the terms and conditions of the contract. Figure 10 shows that 86% of the contractors surveyed indicated that they have at least once opted not bid on a contract due to the inclusion of a PLA. Similarly, 18 of the 19 large contractors surveyed (95%) opted to not bid on at least one contract due to the inclusion of a PLA.

To obtain information as to why contractors did not bid on contracts containing PLAs a question pertaining to this was included in the survey. The survey supplied six responses to choose from as well as allowed an opportunity for contractors to supply their own reasoning. Contractors were limited to a total of three responses. As a result of this format, it is acknowledged that all feelings pertaining to PLAs may not be included, but a fair representation of the strongest reasons is captured and shown in Figure 11.

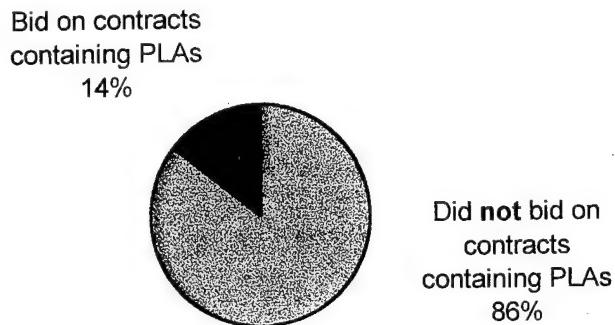
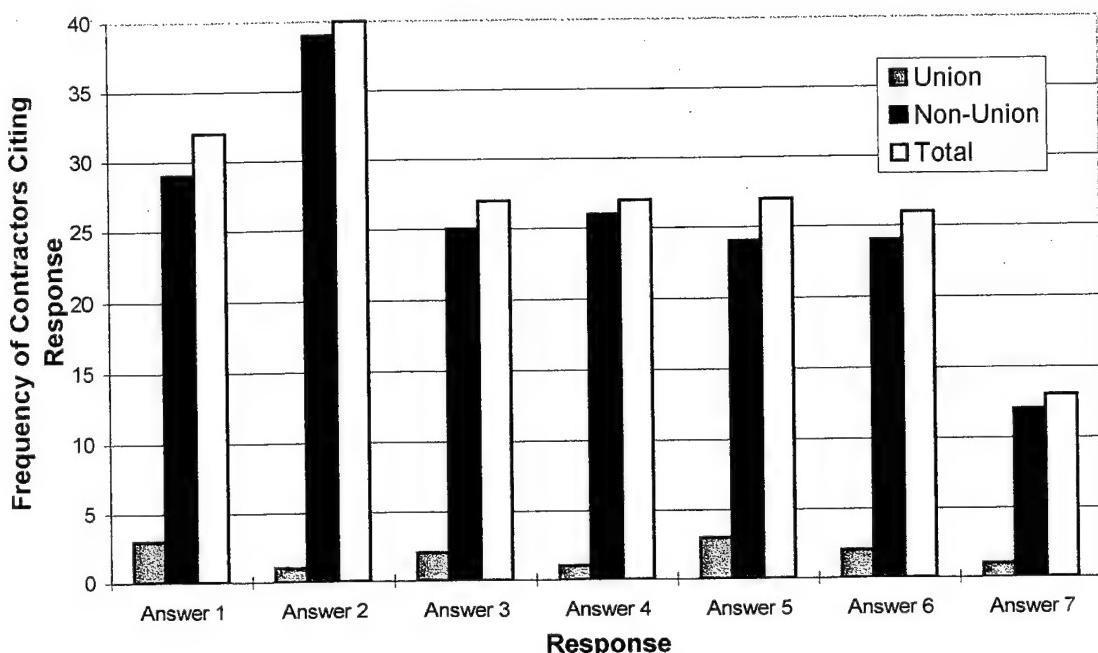


Figure 10. Contractor decisions to bid on contracts containing PLAs.

The overwhelming reason why contractors turned down the opportunity to bid on contracts containing a PLA was that they did not want to rely on local unions for their labor source. This was also true for the large contractors. This response is not hard to imagine as most non-union affiliated contractors have their own labor force as permanent employees of their company. Employing labor from union hiring would potentially require, at least in the short term, replacement of these employees. The second most common answer by all the contractors surveyed was that contractors felt that their bid would not be competitive due to the requirements imposed by the PLA. Although there are typically multiple requirements incorporated into any PLA, it can be assumed that contractors are basing their concerns in terms labor costs set within PLAs. The second most common response by the large contractors is that they do not want the union presence to impact other ongoing company jobs. This would make sense as larger companies are in the best interest of unions to organize because of the potential to gain new members and additional work. Concerns about competitiveness also concerns large companies and the remaining responses were equally given for rationale as to why contractors did not bid on contracts containing PLAs.



Answer 1: Company felt bid would not be competitive due to requirements of PLA.

Answer 2: Company did not wish to rely on local unions as primary source of labor.

Answer 3: Company did not wish to potentially lose permanent employees due to hiring union labor for a specific project.

Answer 4: Company did not desire to involve itself with union requirements pertaining to payroll, employee benefits or other financial issues.

Answer 5: Company did not want the union presence to impact other ongoing company jobs.

Answer 6: Company did not want to allow union access to your current company work force.

Answer 7: Other

Figure 11. Contractor reasoning for not bidding on contracts containing PLAs.

Contractors have overwhelmingly expressed that they have chosen not bid on a contract containing a PLA. The next area investigated was what, if anything, contractors are doing to avoid contracts that may subject them to PLAs but at the same time maintain a workload. Figure 12(c) shows that 78% of contractors surveyed have been influenced enough by PLAs to change their approach in acquiring new work. Although only 7 union affiliated contractors are represented in the survey, Figure 12(a), not surprisingly, shows only 43% of union contractors have changed their approach in acquiring new work. The large contractors responded in a similar manner with 79% (15 of 19) changing their

approach in acquiring new work, but both large union contractors indicated that they did not have a need to change the way they operate.

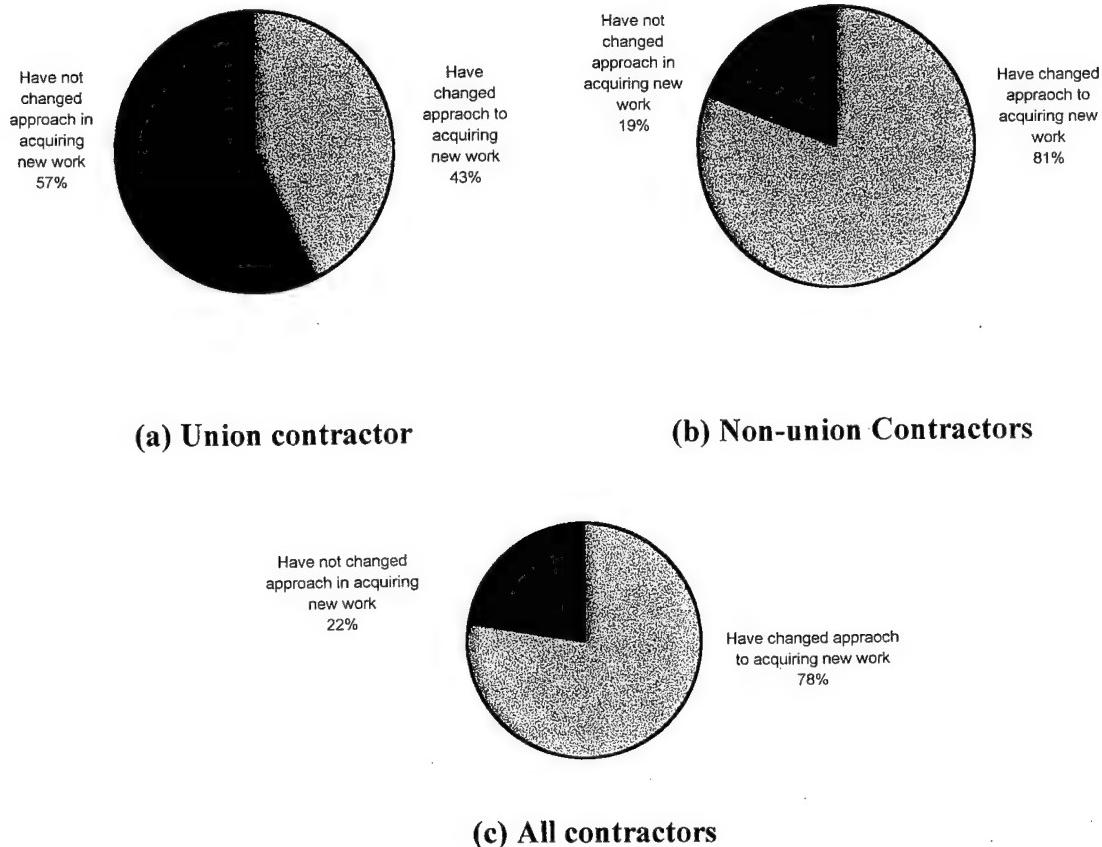
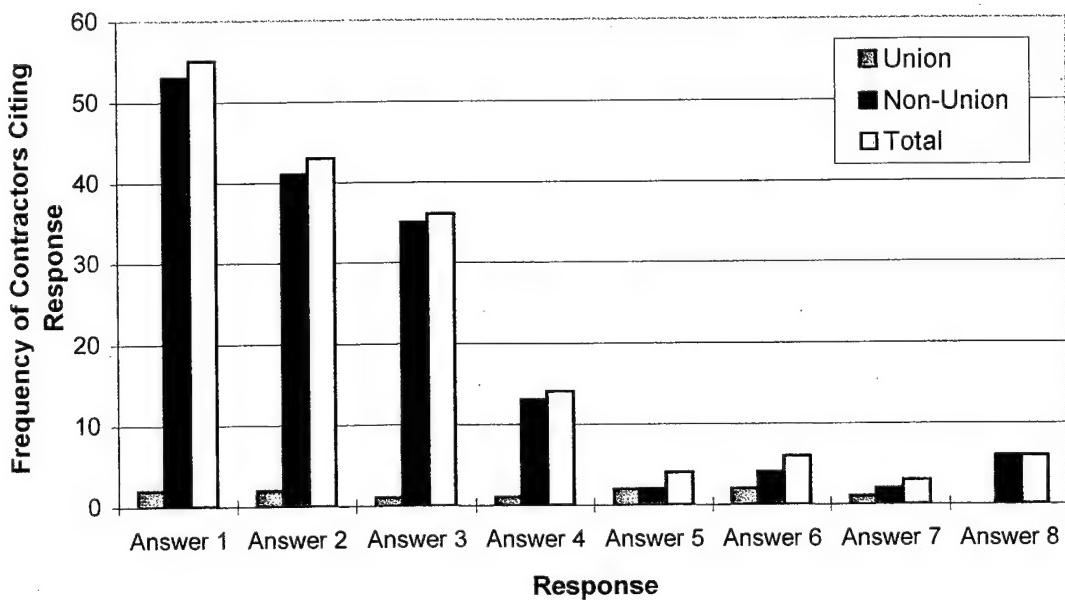


Figure 12. Contractor approach in acquiring new work as a result of the implementation of PLAs.

Figure 13 illustrates the manner in which contractors have changed their approach to bidding. The overwhelming response was that contractors flatly do not bid on contracts containing PLAs. This response does not truly reflect a change in an acquisition process, but answers 2 through 7 do provide data on actual changes in the bidding process among contractors. Of these, the most common response was to bid on fewer or no publicly funded projects. This strategy, as outlined above when discussing Figures 8 and 9, drastically minimizes the chances of encountering a contract containing a PLA. Many contractors also mentioned that they pursue more negotiated work which is consistent

with acquiring work from other sources than the public sector. Some contractors indicated that they bid smaller contracts. The use of PLAs is typically reserved for larger projects and this approach would allow contractors to still bid on public works projects, but, in theory, not those containing PLAs. The large contractors, when analyzed as an independent group, again mirrored the responses of all the contractors surveyed.



Answer 1: Will not bid on projects containing restrictive bidding requirements.

Answer 2: Bid on fewer or no publicly funded projects.

Answer 3: Select more negotiated contract work.

Answer 4: Select smaller projects.

Answer 5: Must adjust overhead costs to remain competitive.

Answer 6: Must adjust profit margin to remain competitive.

Answer 7: Must adjust scheduling to accommodate union trades.

Answer 8: Other.

Figure 13. Changes made by contractors in seeking new work as a result of PLAs being introduced into contracts.

Only time will tell whether the use of PLAs and other restrictive bidding practices in construction contracting are here to stay, but the author felt this question was worthy of being introduced to the contractors being surveyed. Figure 14(c) shows that most contractors are uncertain about the future use of PLAs and only a small minority felt that

their use would remain status quo or decrease in the future. Sixty-three percent of the large contractors are also uncertain about the future use of PLAs. This seemingly indicates that although merit shop contractors are opposed to their use, they have come to the realization that PLAs will be an issue that they will be confronted with when looking toward the future.

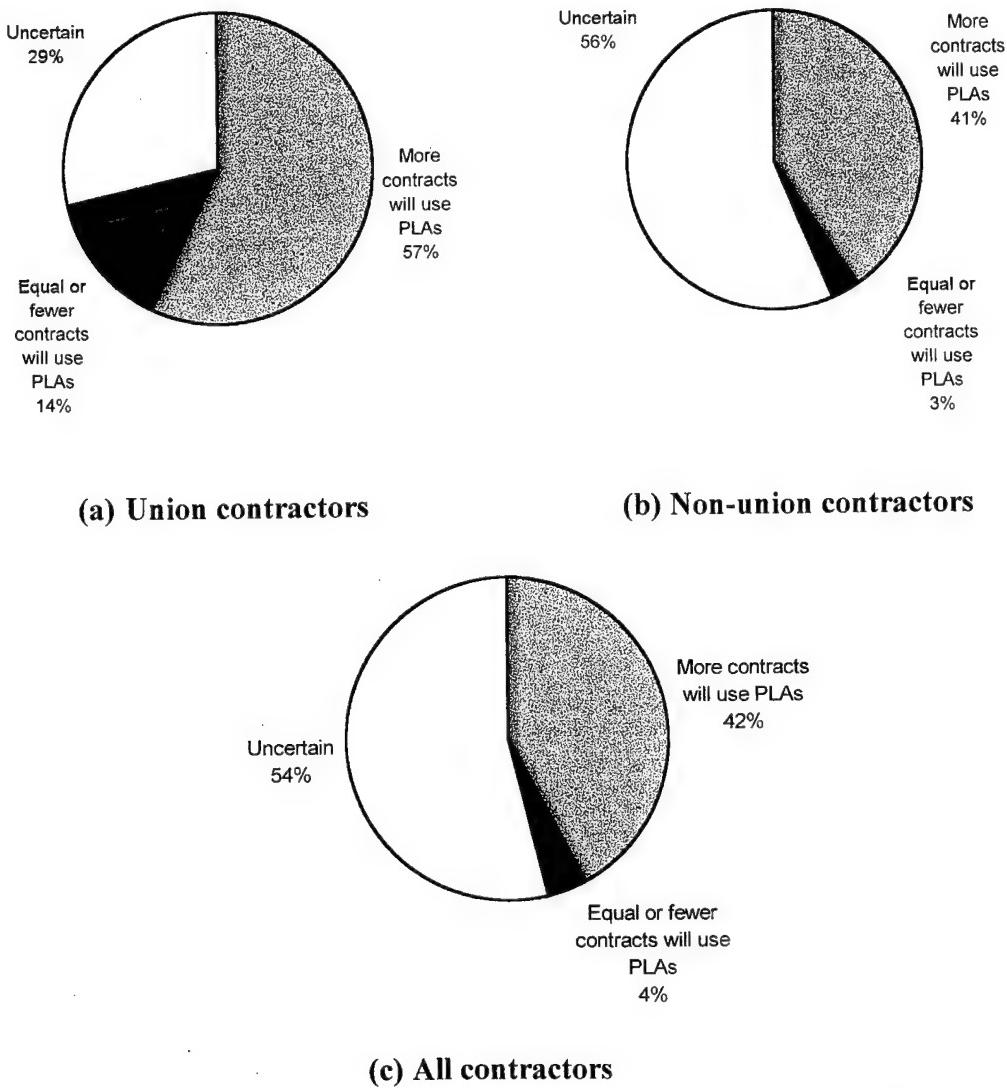


Figure 14. Contractor considerations pertaining to the future use of PLAs.

The final question of the survey dealt with contractor feelings of how the use of PLAs and other restrictive bidding practices leave them competitively with other companies as a

whole. The response to this question, in keeping with several other areas addressed in the survey, illustrates only the contractors' perception of how they feel on this particular issue. More in-depth research would be necessary to support contractor claims of how PLAs affect them and impact their business operation.

Figure 15(b) illustrates the results to the final survey question which shows that 98% of all non-union contractors indicate that they are at an overall disadvantage as a result of PLAs being used in construction contracts. Of the union contractors surveyed, this number is only 57% and surprisingly, only one union (and coincidentally only one non-union) contractor indicated that they were at an advantage as a result of PLAs being used in contracting. Of the large contractors surveyed only the one non-union contractor above indicated an advantage and the other 18, including the 2 union contractors felt at a disadvantage as a result of PLAs being used in contracts.

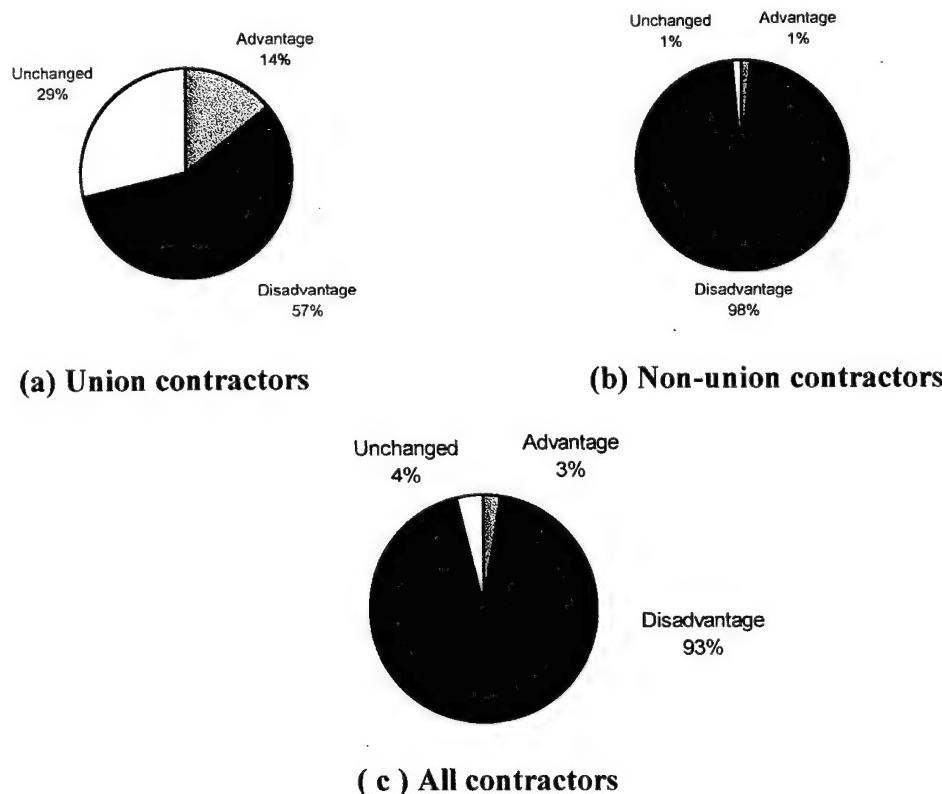


Figure 15. Contractor perception on how PLAs and other restrictive bidding practices place them competitively.

The results of this survey give a sense of the attitudes and experience of contractors who would seemingly be most impacted by the use of PLAs in construction contracts. The survey was developed in a manner to get the maximum response possible of the surveyed pool to ensure a valid representation of contractors. Results provided by the large contractors were not significantly different than the results provided by the overall survey pool. Furthermore, it must be reiterated that the results obtained and displayed represent only the perceptions of merit shop contractors in the western Washington area.

Although the vast amount of work performed by contractors is privately funded, it appears that the use of PLAs in publicly funded contracts remains a concern for contractors. It seems that surveyed contractors are very aware of the use of PLAs and related issues, but this might not be true if the survey pool was expanded beyond ABC membership. ABC as an advocate for merit shop contractors, keeps member contractors abreast of current issues through correspondence (newsletters, magazines, etc.).

In western Washington, PLAs seem to be prominent in large state and local construction contracting. Projects such as the recently completed Port of Seattle Pier 66 rehabilitation project and the ongoing Seattle Mariner baseball stadium have incorporated the use of PLAs. These high profile projects coupled by recent publicity regarding PLAs nationwide have no doubt also assisted in bringing the PLA issue to light to many area contractors.

The survey indicates that the use of PLAs may be on the rise, specifically in 1997 when compared to previous years. Those contractors who have opted to bid on a contract containing a PLA (18%) at least once have done so significantly more often on publicly funded work than on privately funded work. This result may stem from the circumstance that private owners may opt to use PLAs much less in their construction contracts because they have many more options and methods to obtain construction services.

Contractors indicate that the incorporation of a PLA into a contract has specifically influenced their decision on whether to bid on a contract. Most often the contractors did

not want to rely on the use of union labor for the duration of the contract. This is understandable because if the contractor did not maintain a sufficient backlog of work, the company may be forced to lay off its permanent labor force. Contractors also felt they would not be competitive enough to win the bid. Therefore, a probable business decision was made to forgo incurring the overhead expenses required in preparing a bid on such a project.

An overwhelming number of contractors surveyed indicated that one manner in which they are approaching the issue of PLAs is simply not to bid on contracts containing them. This is the most obvious and easiest solution to avoid PLAs, but does not enhance competitive bidding - the primary principle in bidding for most public works contracts. Contractors have also opted to bid fewer or no publicly funded contracts, or select those that are smaller and therefore under the PLA's thresholds. And finally, those contractors that continue to bid public works contracts containing PLAs feel the need to adjust overhead costs and/or profit margins to remain competitive.

The future use of PLAs in construction contracting remains to be seen, but most contractors feel that they are at a distinct disadvantage as a result of their current use. Feelings on the subject are strong and will probably continue to be so for some time to come. Legal challenges will certainly continue by those who oppose the use of PLAs and advocates will continue to seek new projects to incorporate PLAs. Ultimately, over time, a precedent for their use will be set and a more detailed criteria for their use will be established.

4.4 CONTACTOR COMMENTS

In closing, the following are some of the numerous comments contractors supplied on their returned surveys. They are presented here to provide a greater sense of the contractors' sentiments and concerns about PLAs. It should be noted that all comments

provided by union affiliated contractors have been included, but because of the magnitude of response by non-union contractors only a representative number have been provided.

Comments are recorded verbatim with no editing or clarification.

Union contractors

"PLAs are nothing more than a restraint on the free enterprise system and I don't believe they offer owners a truly competitive environment."

"Because we are union - restrictions to union programs help us - all union jobs seem to go smoother. Our experience with open shop jobs (non-union) is more problems with contract document compliance and it takes longer to close out and collect."

"We have concerns as to why this matter is only restricted to only union apprenticeship. It appears to be unfair and possibly politically motivated. It should be open to all federally approved apprentice programs."

Non-union contractors

"Bluntly - PLAs and other pro-union discriminatory policies are a pet of the democratic party. The current emphasis on those policies through executive orders, etc., is a transparent "reward" for organized labor's efforts in support of the democrats during this decade. These policies spit on the ideal of equal opportunity that most Americans (and the other 80% of the construction work force) believe is fundamental to our way of life."

"I am a product of the union apprentice program, so I know that the CITC (*Construction Industry Training Council, ABC's craft training partner*) is of equal worth. The CITC program was state approved for a short time, but unions challenged it. We are a legitimate threat to the unions and they are going to great lengths to keep us down. Their desire for 15% apprentices is totally self serving and a smoke screen."

"In a free enterprise country it seems a paradox that we are required to run our company in a particular manner in order to bid public jobs. Because of these mandates and the voluminous paper work we simply don't bid public jobs. This is unfortunate because we are an excellent company not available to do public jobs."

"Today, as a matter of fact, I received bid results on a project we bid last week. Our bid was approximately \$53,000 - our two competitors on this project were both approximately \$59,000. The general contractor we bid the job to did not sufficiently by way of bulletin, etc., notify prospective bidders of the union only of PLA status of the project. We wasted time and money bidding, are denied the contract based on our refusal to sign a PLA, and the owner pays an additional 10+% for comparable work. Sounds to me like we all loose, except for the union."

"We are a small but growing subcontracting company. These restrictions exclude us from growing into those types of projects. In essence we are being legislated to what kind of business and how we run our business."

"This trend toward union-only is extremely unfair to contractors like us who wish to work merit shop and have no desire to deal with unions. We once were union and do not wish to go back. We are not anti-union, we just want to be treated fairly, without discrimination on the basis of whether or not we are signatory to a labor union. FYI - we had considered 3 city/county projects over the last three months, but upon discovering the union apprentice quota requirement, decided not to bid . . ."

"The forces of organized labor are persuasive in our legislature. there is only 1 'approved' state apprentice program in Washington State. That one is union only, and those not affiliated with the union cannot attend the school. Any bid requirement that requires any percentage of hours worked by apprentices is discriminating to those who choose non-affiliation with the union. The 'PLA' is the same discriminatory practice that forces the work to be done 'union-only', a group that represents barely 20% of the workforce."

"Our clients require the best market value and forcing restrictive rules into the process takes away from the free market concept. We select subcontractors based on merit (including pricing and scheduling and other attributes meaningful to completing the work)."

"Restrictive bidding requirements greatly limits the number of qualified bidders. As a result, a greater percentage of work potentially goes to a smaller percentage of contractors. These requirements effectively eliminate small business participation in public works."

From these representative comments, it is clear that the general perception of contractors opposing the use of PLAs is that the practice is political, exclusionary and a deterrent to free market competition. It is interesting to note that the single positive comment offers experience relating to better "contract document compliance" and fewer delays "to close out and collect". Each of these issues appears to relate more to efficiencies in contract administration and satisfactory contractor performance. The latter issue may point toward workmanship but could just as easily be related to a contractor's administration performance. Briefly stated, it does not appear that an agreement with labor representatives is the appropriate remedy. However, this assessment only stems from one comment.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

5.1 CONCLUSIONS

The stated intent of a PLA is to provide owners a contracting tool to ensure a well constructed product that is delivered in a safe and timely manner. If simply including a PLA into a contract ensures that these construction qualities would be met, one must wonder why all contracts that remotely meet the criteria set forth for using a PLA do not include one. It seems that the use of PLAs is not the guaranteed remedy to a successful project as the federal executive memorandums and state executive orders seem to allude. It also appears that the validity of PLAs on publicly funded contracts may not be as simple, in a legal sense, as some might believe.

Legal review demonstrates that public agencies that choose to use PLAs on their contracts have been challenged regularly across the country. Some courts seem to uphold their use and others determine they are against state competitive procurement codes. Federal law and the RCW do not specifically address the use of PLAs in contracts, therefore legal challenges will continue to be made against their use. Public contracting agencies must do their part by thoroughly understanding the criteria for use (as set forth in executive orders) and evaluating these against projects for which they are contemplating using a PLA.

An example of a thorough analysis and documentation comes from the University of Washington regarding the Bothell Campus project. The university along with the General Administrative Division of Engineering and Architectural Services organized a panel and offered presentation time to the AGC and Washington State Building and Construction Trades Council to state their views pertaining to the criteria established in the Washington Executive Order 96-08. The presentations made by the two organizations were either in support of or disputing the merits of using a PLA with respect to the five distinct criteria outlined in the executive order. The information presented was reviewed and evaluated by

the panel. The decision made reads, in part, "organized labor's assertion that a PLA can generally benefit any project may be correct; however, Washington law and the Executive Order require that there be compelling reasons and clearly demonstrated benefits to the interests of the state and the public for using a PLA. No such compelling reasons or appropriate conditions exist on this project. A project labor agreement will not be used on the Bothell Campus project."

When the virtues of using a PLA are evaluated such as they were in the Bothell Campus project, it appears that PLAs may not be necessary on any construction projects. Chapter 3 illustrated that the rationales used to promote PLAs are also arguably not always serving the public's best interest.

The survey of merit shop contractors revealed that there is a great concern about the use of PLAs in the western Washington region. They believe that they are at a distinct disadvantage in competing for publicly funded projects containing PLAs. Many indicate that they have altered their approach in obtaining new work as a result of the use of PLAs in local area contracts. There has been a slight increase in the use of PLAs on publicly funded projects over the past several years which does not bode well for merit shop contractors as organized labor will undoubtedly pursue the use of PLAs on future significant projects such as the new professional football stadium and the proposed Seattle rapid transit system.

5.2 RECOMMENDATIONS

To gain a greater appreciation of the full impact that PLAs have created on the construction industry additional research should be accomplished. Several specific topics are suggestions.

Initially it is recommended that contracting agencies that have administered contracts which have incorporated PLAs be contacted for several reasons. First, an interview with

the construction manager should be conducted to determine the rationale or justification that supported the use of a PLA. It should be determined if the customer felt it was a positive or negative experience and why. Second, a study should analyze the construction contract itself to determine if the schedule, change orders, delays, budget overruns, disputes, safety and injuries, or any other contractual issues developed as a result of using a PLA or were successfully avoided because of the PLA. This follow-on research should also be aimed at private organizations that have used PLAs to ensure as many contracts as possible can be analyzed.

Interviews with large open shop contractors that are accustomed to bidding public construction contracts is also recommended. These interviews would provide a more in-depth understanding as to how individual contractors are affected by the use of PLAs.

Public contracting policy requires general contractors to hire women and minority business enterprises (WMBE) to contribute to part of the work. This level of contribution is based on a percentage of the overall construction price. Often, part or all of this goal is met by procuring materials from WMBE suppliers because of the small number of WMBE construction contractors. Furthermore, a relatively few number of WMBE construction contractors are unionized. Additional research should be conducted to determine how the general contractor's already difficult task of meeting WMBE goals is affected, specifically on contracts containing PLAs.

Finally additional research should be conducted to determine if claims made by advocates of PLAs can be definitively substantiated. Chapter 3 was developed by using research and literature created by opponents of PLAs. It appears that PLA advocate organizations have mostly produced literature as rebuttals to documents written by opponents of PLAs. Further literature research should be conducted specifically geared toward union organizations to determine if any documentation exists supporting organized labor claims on construction issues such as, but not limited to safety, cost, training, labor peace, quality of work and contractor capability.

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47.28.070 Form of Bid - Data Required - Requirements - Refusal to Furnish Form - Appeal

APPENDIX A

CONTRACTOR SURVEY



UNIVERSITY OF WASHINGTON

Department of Civil Engineering
Transportation, Surveying, & Construction Engineering

October 10, 1997

Dear ABC Contractor Member:

We at the University of Washington are researching the use of restrictive bidding practices such as Project Labor Agreements (PLAs) and union apprenticeship requirements on construction projects in an effort to determine what impact they are having on the construction industry.

The next step in this research is an industry survey within the western Washington region.

Associated Builders and Contractors of Western Washington has greatly assisted in the development of the enclosed survey and has provided the contractor survey pool. This survey will assist in determining the extent to which restrictive bidding requirements are being used in construction contracts and what affect their use is having on the public and private bidding/negotiation process.

Currently, a literature review of the topic is also being conducted to examine legal issues pertaining to PLAs and apprenticeship requirements as well as to determine if claims made in state executive orders and federal executive memorandums endorsing PLAs can be validated.

By filling out the enclosed brief survey you will greatly assist in the overall research of this subject. Please provide your best estimates if the actual requested information is not readily available as it is important to receive as many responses as possible. **The prompt return of the survey by 24 October 1997 is greatly appreciated.**

Thank you for your time. If you have any questions or comments please feel free to contact us at the address or number listed below.

Yours faithfully,

Phillip S. Dunston
Assistant Professor

Ian C. Lange
Graduate Research Assistant

**RESTRICTIVE BIDDING (UNION-ONLY)
REQUIREMENTS SURVEY**

1. Company name (optional, will be kept confidential): _____
2. Type of contractor: General/Prime Sub-Contractor Both
3. Primary company labor affiliation : Union Non-Union
4. CSI Division(s) that best describes your work: _____
5. Company Annual Construction Volume (average): _____

<input type="checkbox"/> \$50 million or above	<input type="checkbox"/> \$1 - \$3 million
<input type="checkbox"/> \$35 - \$50 million	<input type="checkbox"/> \$750,000 - \$1 million
<input type="checkbox"/> \$20 - \$35 million	<input type="checkbox"/> \$500,000 - \$750,000
<input type="checkbox"/> \$10 - \$20 million	<input type="checkbox"/> \$300,000 - \$500,000
<input type="checkbox"/> \$6 - \$10 million	<input type="checkbox"/> \$100,000 - \$300,000
<input type="checkbox"/> \$3 - \$6 million	<input type="checkbox"/> below \$100,000

6. Annual number of contracts **bid and negotiated** per year:

1-5 6-10 11-20 21-30 31-50 51-80 over 80

7. Annual number of contracts **awarded** (by bid and negotiation) per year:

1-5 6-10 11-20 21-30 31-50 51-80 over 80

8. Annual number of contracts obtained by sealed bid:

0 1-3 4-6 7-10 11-15 16-25 26-50 over 50

9. Annual number of contracts obtained by negotiation:

0 1-3 4-6 7-10 11-15 16-25 26-50 over 50

10. Annual number of contracts funded by **federal government**:

0 1-3 4-6 7-10 11-15 16-25 26-50 over 50

11. Annual number of contracts funded by **state/local government**:

0 1-3 4-6 7-10 11-15 16-25 26-50 over 50

12. Annual number of contracts **privately funded**:

0 1-3 4-6 7-10 11-15 16-25 26-50 over 50

13. Is your company aware of the use of union-only Project Labor Agreements (PLAs) in selected publicly and privately funded projects? Yes No

14. Is your company aware of the federal Executive Memorandum of June 1997 encouraging the consideration of PLAs for "large and significant" federally funded projects more than \$5 million?
 Yes No

15. Is your company aware of the State of Washington Executive Order 96-08 of December 1996 encouraging the consideration of PLAs for appropriate public works projects? Yes No

16. Is your company aware of the requirements adopted by the City of Seattle, King County and the Port of Seattle requiring 15% of labor hours on selected projects to be performed by apprentices in state approved (union) programs? Yes No

17. Has your company ever bid on a project that incorporated a PLA or apprenticeship requirement as a mandatory part of the bidding documents? Yes No

18. If yes to question 17 above, how many were publicly funded?

During 1997: 0 1 2 3 4 5 over 5
 Prior to 1997: 0 1 2 3 4 5 over 5

19. If yes to question 17 above, how many were privately funded?

During 1997: 0 1 2 3 4 5 over 5
 Prior to 1997: 0 1 2 3 4 5 over 5

20. Has your company ever **NOT** bid on a project specifically because a PLA or apprenticeship requirement was incorporated into and was a requirement of the bidding documents? Yes No

21. If yes to question 20 above, please mark the three (3) most appropriate reasons why:

- Company felt their bid would not be competitive due to requirements of the PLA.
- Company did not wish to rely on local unions as primary source of labor.
- Company did not wish to potentially lose permanent employees due to hiring union labor for a specific project(s).
- Company did not desire to involve itself with union requirements pertaining to payroll, employee benefits or other financial issues.
- Company did not want the union presence to impact other ongoing company jobs.
- Company did not want to allow union access to your current company work force.
- Other (please explain):

22. Has the institution of the above mentioned federal Executive Memorandum, state Executive Order, or the apprentice requirements changed the type of work you seek, your bidding process or bidding approach in any manner? Yes No

23. If yes to question 22 above, please mark the three (3) most appropriate reason(s) how:

- Will not bid on projects containing restrictive bidding requirements (PLAs, etc.).
- Bid on fewer or no publicly funded projects
- Select more negotiated contract work.
- Select smaller jobs.
- Must adjust overhead costs to remain competitive.
- Must adjust profit margin to remain competitive.
- Must adjust scheduling to accommodate union trades.
- Other (please explain):

24. Do you feel more contracts will include PLAs or apprentice requirements in the future?

- Yes No Uncertain

25. How do you feel the use of PLAs and apprentice requirements in contracts places your company competitively?

- Advantage Disadvantage Unchanged

26. The purpose of this survey is to find out what affect, if any, the use of restrictive bidding requirements is having on contractors. Please provide any additional comments, thoughts or experiences you might have pertaining to this or other related issues.

THANK YOU FOR YOUR TIME IN COMPLETING THIS SURVEY!

APPENDIX B

SURVEY RESULTS IN

TABULAR FORM

RESULTS OF SURVEY IN TABULAR FORMAT

1. Company name (optional):

2. Type of contractor:

	Union	Non-Union	Total
General (prime)	1	20	21
Specialty (sub)	2	36	38
Both	4	13	17
Total	7	69	76

Contractors (>\$6 million)
11
4
4
19

3. Primary company labor affiliation:

Union	7
Non-Union	69
Total	76

Contractors (>\$6 million)
2
17
19

4. CSI Division(s) that best describes your work:

CSI Division	Union	Non-Union	Total	Contractors (>\$6M)
Division 1- General Requirements	3	18	21	11
Division 2 - Sitework	2	2	4	0
Division 3 - Concrete	0	3	3	2
Division 4 - Masonry	0	0	0	0
Division 5 - Metals	0	3	3	1
Division 6 - Wood and Plastics	0	5	5	0
Division 7 - Thermal & Moisture Protection	1	1	2	0
Division 8 - Doors and Windows	0	0	0	0
Division 9 - Finishes	0	3	3	0
Division 10 - Specialties	0	0	0	0
Division 11 - Equipment	0	0	0	0
Division 12 - Furnishings	0	0	0	0
Division 13 - Special Construction	0	0	0	0
Division 14 - Conveying Systems	0	0	0	0
Division 15 - Mechanical	0	12	12	3
Division 16 - Electrical	1	22	23	2
Total	7	69	76	19

5. Company Annual Construction Volume (average):

Construction Volume	Union	Non-Union	Total	Contractors (>\$6 million)
\$50 million and above	0	5	5	5
\$35 - \$50 million	0	1	1	1
\$20 - \$35 million	0	0	0	0
\$10 - \$20 million	0	4	4	4
\$6 - \$10 million	2	7	9	9
\$3 - \$6 million	1	12	13	0
\$1 - \$3 million	3	31	34	0
\$750,000 - \$1 million	1	2	3	0
\$500,000 - \$750,000	0	2	2	0
\$300,000 - \$500,000	0	3	3	0
\$100,000 - \$300,000	0	2	2	0
below \$100,000	0	0	0	0
Total	7	69	76	19

6. Annual number of contracts bid and negotiated:

	Union	Non-Union	Total	Contractors (>\$6 million)
1 to 5	0	1	1	0
6 to 10	1	3	4	0
11 to 20	1	7	8	1
21 to 30	1	5	6	2
31 to 50	1	8	9	3
51 to 80	1	11	12	2
over 80	2	34	36	11
Total	7	69	76	19

7. Annual number of contracts awarded (by bid and negotiation):

	Union	Non-Union	Total	Contractors (>\$6 million)
1 to 5	1	3	4	1
6 to 10	0	12	12	2
11 to 20	4	6	10	3
21 to 30	2	12	14	3
31 to 50	0	6	6	2
51 to 80	0	5	5	0
over 80	0	25	25	8
Total	7	69	76	19

8. Annual number of contracts obtained by sealed bid:

	Union	Non-Union	Total
Zero	0	18	18
1 to 3	2	8	10
4 to 6	1	13	14
7 to 10	1	9	10
11 to 15	1	7	8
16 to 25	2	7	9
26 to 50	0	2	2
over 50	0	5	5
Total	7	69	76

Contractors (>\$6 million)
2
1
3
5
2
2
1
3
19

9. Annual number of contracts obtained by negotiation:

	Union	Non-Union	Total
Zero	0	4	4
1 to 3	2	9	11
4 to 6	2	9	11
7 to 10	0	6	6
11 to 15	2	8	10
16 to 25	1	6	7
26 to 50	0	8	8
over 50	0	19	19
Total	7	69	76

Contractors (>\$6 million)
1
2
1
3
4
1
0
7
19

10. Annual number of contracts funded by federal government:

	Union	Non-Union	Total
Zero	2	17	19
1 to 3	3	28	31
4 to 6	1	3	4
7 to 10	1	12	13
11 to 15	0	4	4
16 to 25	0	3	3
26 to 50	0	0	0
over 50	0	2	2
Total	7	69	76

Contractors (>\$6 million)
5
5
2
4
1
1
0
1
19

11. Annual number of contracts funded by state/local government:

	Union	Non-Union	Total
Zero	0	15	15
1 to 3	3	27	30
4 to 6	1	10	11
7 to 10	0	8	8
11 to 15	1	2	3
16 to 25	2	2	4
26 to 50	0	3	3
over 50	0	2	2
Total	7	69	76

Contractors (>\$6 million)
5
6
2
1
2
0
1
2
19

12. Annual number of contracts privately funded:

	Union	Non-Union	Total
Zero	0	1	1
1 to 3	1	9	10
4 to 6	2	6	8
7 to 10	0	8	8
11 to 15	2	1	3
16 to 25	1	9	10
26 to 50	1	8	9
over 50	0	27	27
Total	7	69	76

Contractors (>\$6 million)
0
3
1
2
1
3
1
8
19

13. Is your company aware of the use of union-only Project Labor Agreements (PLAs) in selected publicly and privately funded projects?

	Union	Non-Union	Total
Aware	6	67	73
Unaware	1	2	3
Total	7	69	76

Contractors (>\$6 million)
19
0
19

14. Is your company aware of the federal Executive Memorandum of June 1997 encouraging the consideration of PLAs for “large and significant” federally funded projects more than \$5 million?

	Union	Non-Union	Total
Aware	6	59	65
Unaware	1	10	11
Total	7	69	76

Contractors (>\$6 million)
19
0
19

15. Is your company aware of the State of Washington Executive Order 96-08 of December 1996 encouraging the consideration of PLAs for appropriate public works projects?

	Union	Non-Union	Total
Aware	6	55	61
Unaware	1	14	15
Total	7	69	76

Contractors (>\$6 million)
14
5
19

16. Is your company aware of the requirements adopted by the City of Seattle, King County and the Port of Seattle requiring 15% of labor hours on selected projects to be performed by apprentices in state approved (union) programs?

	Union	Non-Union	Total
Aware	6	62	68
Unaware	1	7	8
Total	7	69	76

Contractors (>\$6 million)
18
1
19

17. Has your company ever bid on a project that incorporated a PLA or apprenticeship requirement as a mandatory part of the bidding documents?

	Union	Non-Union	Total
Have bid on a contract containing a PLA	2	12	14
Have not bid on a contract containing a PLA	5	57	62
TOTAL	7	69	76

Contractors (>\$6 million)
2
17
19

18. If yes to question 17, how many were publicly funded?

	During 1997			Prior to 1997		
	Union	Non-Union	Total	Union	Non-Union	Total
Zero	0	2	2	1	5	6
One	0	1	1	0	1	1
Two	0	1	1	0	0	0
Three	2	3	5	0	2	2
Four	1	1	2	0	1	1
Five	0	0	0	0	1	1
Over 5	0	3	3	1	1	2

Contractors (>\$6 million)	
During 1997	Prior to 1997
1	1
0	1
1	0
0	0
0	0
0	0
0	0

19. If yes to question 17, how many were privately funded?

	During 1997			Prior to 1997			Contractors (>\$6 million)	
	Union	Non-Union	Total	Union	Non-Union	Total	During 1997	Prior to 1997
Zero	1	9	10	1	8	9	2	1
One	1	0	1	0	0	0	0	0
Two	0	1	1	1	0	1	0	0
Three	0	1	1	0	0	0	0	0
Four	0	0	0	0	2	2	0	1
Five	0	0	0	0	0	0	0	0
Over 5	0	1	1	0	2	2	0	0

20. Has your company ever NOT bid on a project specifically because a PLA or apprenticeship requirement was incorporated into and was a requirement of the bidding documents?

	Union	Non-Union	Total	Contractors (>\$6 million)
Did not bid on contracts	4	61	65	18
Bid on contracts	3	8	11	1
Total	7	69	76	19

21. If yes to question 20, please mark the three (3) most appropriate reasons why:

	Union	Non-Union	Total	Contractors (>\$6 million)
Company felt bid would not be competitive due to requirements of the PLA.	3	29	32	7
Company did not wish to rely on local unions as primary source of labor.	1	39	40	11
Company did not wish to potentially lose permanent employees due to hiring	2	25	27	6
Company did not desire to involve itself with union requirements pertaining to payroll, employee benefits or other financial issues.	1	26	27	7
Company did not want the union presence to impact other ongoing company jobs.	3	24	27	11
Company did not want to allow union access to your current company workforce.	2	24	26	10
Other	1	12	13	3
Total	13	179	192	55

22. Has the institution of the above mentioned federal Executive Memorandum, state Executive Order, or the apprentice requirements changed the type of work you seek, your bidding process or bidding approach in any manner?

	Union	Non-Union	Total	Contractors (>\$6 million)
Have changed approach to acquiring new work	3	56	59	15
Have not changed approach in acquiring new work	4	13	17	4
Total	7	69	76	19

23. If yes to question 22, please mark the three (3) most relevant changes:

	Union	Non-Union	Total	Contractors (>\$6 million)
Will not bid on projects containing restrictive bidding requirements.	2	53	55	15
Bid on fewer or no publicly funded projects.	2	41	43	12
Select more negotiated contract work.	1	35	36	11
Select smaller projects.	1	13	14	1
Must adjust overhead costs to remain competitive.	2	2	4	1
Must adjust profit margin to remain competitive.	2	4	6	1
Must adjust scheduling to accommodate union trades.	1	2	3	1
Other.	0	6	6	2
Total	11	156	167	44

24. Do you feel more contracts will include PLAs or apprentice requirements in the future?

	Union	Non-Union	Total	Contractors (>\$6 million)
More contracts will use PLAs	4	28	32	5
Equal or fewer contracts will use PLAs	1	2	3	2
Uncertain	2	39	41	12
Total	7	69	76	19

25. How do you feel the use of PLAs and apprentice requirements in contracts places your company competitively?

	Union	Non-Union	Total	Contractors (>\$6 million)
Advantage	1	1	2	1
Disadvantage	4	67	71	18
Unchanged	2	1	3	0
Total	7	69	76	19

26. The purpose of this survey is to find out what affect, if any, the use of restrictive bidding requirements is having on contractors. Please provide any additional comments, thoughts or experiences you might have pertaining to this or other related issues.

Various comments provided in Chapter 4 of this report.